#### OFFICE OF PLANNING

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2020 SEP -2 A 8: 51

#### BEFORE THE LAND USE COMMISSION

#### OF THE STATE OF HAWAII

In the Matter of the Petition of	DOCKET NO. A89-642
C. BREWER PROPERTIES, INC.	OFFICE OF PLANNING'S RESPONSE TO
)	PETITIONERS WAILUKU PLANTATION
To Amend the Agricultural Land Use District )	LLC, EDGAR SOMERA, FAY SOMERA,
Boundary into the Urban Land Use District for )	LARRY S. SKY, DAYONG ZHAO, XIU
approximately 626 Acres Situate at Wailuku and )	XIANG FANG, BONG HWA SHI JORDAN,
Piihana, Maui, Hawaii, Tax Map Key Nos. (2) 3-5-	WENXIAO LIU AND ELISE TRAVIS'
001:001(por.), 017(por.); (2) 3-4-007:002; (2) 3-3-	MOTION FOR ORDER BIFURCATING
001:033, 039, and 016(por.); (2) 3-4-032:010, 018, and)	DOCKET NO. A89-642; CERTIFICATE OF
001(por.).	SERVICE
)	

OFFICE OF PLANNING'S RESPONSE TO PETITIONERS WAILUKU PLANTATION LLC, EDGAR SOMERA, FAY SOMERA, LARRY S. SKY, DAYONG ZHAO, XIU XIANG FANG, BONG HWA SHI JORDAN, WENXIOA LIU AND ELISE TRAVIS' MOTION FOR ORDER BIFURCATING DOCKET NO. A89-642

THE OFFICE OF PLANNING, STATE OF HAWAII ("OP"), recommends the Land Use Commission ("LUC") approve Petitioners' Motion for Order Bifurcating Docket Number A89-642 pursuant to Hawaii Administrative Rules ("HAR") §§ 15-15-01, 15-15-70, and 15-15-71.

# Background

In 1989, C. Brewer Properties, Inc. ("Original Petitioner") petitioned the LUC to reclassify 626 acres ("Petition Area") from the State Agricultural District to the Urban District. The LUC approved the Petition and on January 30, 1990 issued its Findings of Fact, Conclusions of Law, and Decision and Order ("1990 D&O"). The Petition Area contained two non-contiguous parcels, the Wailuku Project District No. 3, (consisting of Tax Map Key Numbers ("TMK Nos.") (2) 3-5-001:001 (por.) and 017 (por.) and (2) 3-4-007:002 – "Kehalani Parcel"), and the Piihana Project District (consisting of TMK Nos. (2) 3-3-001:033, 039 and 016 (por.) and (2) 3-4-032:010, 018, and 001 (por.) - "Piihana Parcel").

Subsequently, the Original Petitioner conveyed both parcels to Kehalani Holding Company, Inc. and Kehalani Mauka, LLC. In 2013, Kehalani Holding and Kehalani Mauka conveyed the Kehalani Parcel to RCFC Kehalani, LLC and the Piihana Parcel to RCFC Piihana, LLC.

Through several transactions from 2017 to 2019, RCFC Piihana conveyed the entire Piihana Parcel, approximately 79 acres, to Petitioner Wailuku Plantation. Since then, Petitioner Wailuku Plantation has sold portions of the Piihana Parcel, a total of approximately 4 acres, to different landowners. These are the additional Petitioners listed in the current Motion for Bifurcation (Petitioners' Memorandum in Support of Motion, pg. 7). Petitioner Wailuku Plantation currently owns approximately 75 acres of the Piihana Parcel.

### Petitioners' Motion

The Petitioners ask that the LUC: 1. Order the substitution of the Original Petitioner with the Petitioners and recognize the new fee owners of the Piihana Parcel as formal parties in this Docket; and 2. To bifurcate the Docket and issue a new docket number for the Piihana Parcel.

#### Recommendation

OP believes that change in ownership of the Piihana Parcel constitutes good cause for the substitution of the Original Petitioner with the Petitioners pursuant to HAR § 15-15-71. OP also believes that bifurcation of LUC Docket No. A89-642 into two separate dockets is appropriate given: 1. The owners of the Kehalani Parcel and the Piihana Parcel, respectively, have no affiliation and do not have related plans of development; 2. The two parcels are not geographically contiguous and are in significantly different stages of development; and 3. Both parcels will continue to be subject to the conditions of the 1990 D&O with the exception of Condition No. 9<sup>1</sup> that pertains exclusively to the Piihana Parcel. Bifurcation of the Docket into two separate dockets would allow for the just and efficient determination of every proceeding under HAR § 15-15-01.

Petitioner shall perform further subsurface testing of the Piihana Project District to the satisfaction of the State Historic Preservation Office. Petitioner shall also submit a mitigation plan to the State Historic Preservation Office for review and approval.

Petitioner shall immediately stop work and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the Project's development."

Therefore, OP recommends that the LUC approve Petitioners' Motion for Order Bifurcating Docket No. A89-642.

DATED: Honolulu, Hawaii, September 1, 2020.

OFFICE OF PLANNING STATE OF HAWAII

Mary Alice Evans

Director

# OFFICE OF PLANNING

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# BEFORE THE LAND USE COMMISSION

#### OF THE STATE OF HAWAII

In the Matter of the Petition of	) DOCKET NO. A89-642
C BREWER PROPERTIES, INC.	) CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 626 Acres Situate at Wailuku and Piihana, Maui, Hawaii, Tax Map Key Nos. (2) 3-5-001:001(por.), 017(por.); (2) 3-4-007:002; (2) 3-3-001:033, 039, and 016(por.); (2) 3-4-032:010, 018,	
and 001(por.)	_)

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawaii, September 1, 2020.

OFFICE OF PLANNING STATE OF HAWAII

· May Alice Evans

MARY ALICE EVANS Director